

March 16, 2009

**OFFICE OF THE HEARING EXAMINER  
CITY OF RENTON**

**Minutes**

OWNER: Qi Feng Li & Qing Hua Guan  
1515 Lake Ave S  
Renton, WA 98055

CONTACT: Cramer Northwest, Inc.  
945 N Central Ave, Ste. 104  
Kent, WA 98032

Li Short Plat  
LUA-08-148, SHPL-H, V-H

LOCATION: 1515 Lake Avenue South

SUMMARY OF REQUEST: Hearing Examiner Short Plat approval for a 2-lot subdivision and Hearing Examiner Variance approval for side yard setback requirements along a street.

SUMMARY OF ACTION: Development Services Recommendation: Approve subject to conditions.

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on February 24, 2009.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

**MINUTES**

*The following minutes are a summary of the March 3, 2009 hearing.  
The legal record is recorded on CD.*

The hearing opened on Tuesday, March 3, 2009, at 9:01 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<b><u>Exhibit No. 1:</u></b> Yellow file containing the original application, reports, staff comments, proof of posting, proof of publication and other documentation pertinent to this request.	<b><u>Exhibit No. 2:</u></b> Vicinity Map
<b><u>Exhibit No. 3:</u></b> Site Plan	<b><u>Exhibit No. 4:</u></b> Planting Plan and Tree Retention Plan
<b><u>Exhibit No. 5:</u></b> General Utility/Drainage Control Plan	<b><u>Exhibit No. 6:</u></b> Zoning Map

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, City of Renton, 1055 S Grady Way, Renton, Washington 98055. The applicant requested a 2-lot short plat with a variance. The subject property is considered a Hillside Subdivision, due to the fact that the average slopes exceed 20%. That slope is in the westerly portion of the site. Lot 1 contains an existing house that will remain, Lot 2 contains the pipestem and the steep slope and buffer. The net density would be 7.4 dwelling units per net acre, which would be allowed in the R-8 zone. Access for the lots was proposed from Lake Avenue South via a pipestem, which would also be the access easement to Lot 1.

Because of the location of the existing house, the applicant has requested a reduction in the side yard setback from 15 feet to 11.4 feet.

The Environmental Review Committee issued a Determination of Non-Significance – Mitigated with one measure. No appeals were filed.

Staff believes that the project is consistent with the criteria necessary for variance requests. The applicant would suffer undue hardship and the variance is necessary due to certain circumstances applicable to the subject property including size, shape, topography, location and surroundings of the subject property. Because of the location of the house, the variance would be necessary for access to Lot 2. The 20-foot pipestem that is required leaves an 11.4 foot side yard setback along a street.

The Examiner asked if the applicant could develop this site if the house were to be moved or removed in order to abide by the setbacks. Where is the hardship based on the actual lot size or dimensions?

Mr. Wasser stated that the house could be removed, however the hardship would be economics and the configuration of the way the lot stands currently. There have been other proposals in the area where lots have been developed on large lots like this; this is just the fact that the house exists. Without the critical areas, there could be three lots on this parcel. The steep hillside has reduced the density. This would be the minimum variance necessary to accomplish this purpose.

The plat is consistent with the Comprehensive Plan Land Use and Community Design Element Policies. Except for the side yard setback along a street, the plat is in compliance with the zoning designation.

The applicant would be required to install a five foot landscape strip along the street frontage of Lake Avenue South and would also be required to plant two ornamental trees in the front yard of those lots.

Traffic and Fire Mitigation fees would be imposed on this project.

The project is within the Renton School District and they have indicated that they can accommodate any additional students generated by this proposal.

Per the Hillside Subdivision regulations, the applicant demonstrate that the development will not result in soil erosion and sedimentation, landslide, slippage, excess surface water runoff, increased costs of building and maintaining roads and public facilities and increased need for emergency relief and rescue operations. Compliance with the ERC mitigation measures would satisfy these standards.

Erosion control would be required to comply with the Department of Ecology's Erosion and Sediment Control Requirements, Volume II of 2001 edition of Stormwater Management Manual.

A Native Growth Protection Easement would be required to protect slopes in the buffer area.

Terry Wilson, Cramer NW Inc, 945 N Central, #104, Kent, WA 98032 stated that he is the owner of Cramer NW. The offsite triangular piece of property, that is a separate tax parcel, it does not appear to be part of the right-of-way.

Regarding the variance, a good portion of the setback is actually met, the house was built at an angle and does not parallel the property line. It just bottlenecks at the front northeast corner of the house by just a little over 3 feet. As the pipestem moves westerly the setback increases to 15 feet.

The Examiner asked for the exact dimensions of the home to the proposed easement. He would like to have the average setback distance.

Mr. Wilson stated he could get a measurement on that.

Mr. Wasser stated that it appears to be approximately 20-feet from the northwest corner of the house to the southern line of the pipestem.

Kayren Kittrick, Community and Economic Development stated she believed the triangular parcel was the Panther Creek Wetlands and owned by public. Not sure if that was State or City. She will get that information to the Examiner.

For this parcel water, sewer and storm drainage are all available. The applicant has proposed overland trenches, which are appropriate for this use because it both contributes to water quality as well as slowing the water down so there is lesser possibility of erosion.

The pipestem is short enough so the pavement is only required to be 15 feet wide. It appears that a choice has been made to use the joint use driveway, which is advantageous to the street, it is a lesser cut, but she was not certain if the existing house could be denied a driveway because they have had one previously.

The Examiner held the record open for the remainder of the day to gather information regarding the setback for the existing house.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:35 a.m.

### **FINDINGS, CONCLUSIONS & RECOMMENDATION**

Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### **FINDINGS:**

1. The applicants, Qi Feng Li and Qing Hua Guan, filed a request for a Two-lot Short Plat and a Variance.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance - Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.

5. The subject site is located at 1515 Lake Avenue South. The subject site is located on the west side of Lake Avenue and just south of S 15th Street. SR-167 and its exit ramp to I-405 are located west of the subject site.
6. This short plat was subject to Environmental Review because it contains critical areas and is defined as a Hillside Subdivision due to slope constraints. The short plat was also reviewed by the Hearing Examiner due to its critical areas constraints and Hillside Subdivision designation.
7. The subject site is zoned R-8 (Detached Single Family - 8 dwelling units per acre).
8. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of detached single family homes, but does not mandate such development without consideration of other policies of the Plan.
9. The subject site was annexed to the City with the adoption of Ordinance 1547 enacted in July 1956.
10. The subject site is approximately 15,003 square feet in area.
11. The subject site has a slope average in excess of 20 percent which is what qualifies it as a Hillside Subdivision. The western end of the site slopes downward toward SR-167 with slopes in excess of 40 percent. Approximately the rear or westernmost 48 feet are constrained by the very steep slope, a critical area, and is off limits to construction.
12. The westernmost portion of the site or approximately 32 feet is a buffer area for an offsite Category 2 wetland. The wetland buffer is already encompassed by the steep slope and has no further affect or limitation on development on the site.
13. An existing home and outbuildings are located on the subject site. The applicant proposes retaining the home and removing the outbuildings. The home is located on the eastern third of the subject site.
14. The applicant proposes dividing the subject site into two (2) lots. Proposed Lot 1 would be 5,001 square feet, contain the existing home and would front on Lake Avenue. Proposed Lot 2 would be 10,002 square feet with a pipestem access to Lake Avenue. Proposed Lot 2 would be located west of Proposed Lot 1. The pipestem would be located along the north property line and is proposed to also provide easement access to parking on the rear of Proposed Lot 1. A pipestem access is required to be a minimum of 15 feet wide. An easement driveway is required to be a minimum of 20 feet wide. This pipestem serving as an easement would have to be 20 feet wide.
15. The existing home on Proposed Lot 1 will provide an 11.4 foot setback from the easement-pipestem near the front, northeast, corner of the home, whereas, as noted above, 15 feet is required. The home is built at an angle and provides a larger, 19.67 foot, setback in the rear (northwest corner) of the home and an average setback of 15.58 feet. The setback distance of 15 feet for an easement is not an average but the minimum required. The applicant has requested a variance from the setback provisions to allow the approximately 3.6 foot reduction in the required setback.
16. Other than the location of the home (a self-created condition), the 5,001 square foot lot is relatively rectangular and has no inherent topographic constraints. Proposed Lot 1 contains no exceptionally steep slopes and no wetland or creek areas. According to staff, the zoning code would permit parking in the side yard or front yard. A driveway on Proposed Lot 1 might also provide access to its interior.

17. The subject site is located within the Renton School District. The project is expected to generate approximately 1 school age child.
18. The density for the plat would be approximately 7.4 dwelling units per gross acre after reducing the area by the critical acreage (1,198 square feet) and easement (1,717 square feet).
19. The development will increase traffic approximately 10 trips for the one additional home.
20. There are stormwater facilities in the roadway. The site would continue draining toward the wetlands although erosion control will be required to protect the steep slopes.
21. Both domestic water and sanitary sewer would be provided by the City.
22. Staff testified that the shared driveway proposed for this plat is not required and that Proposed Lot 1 can take direct access from Lake Avenue. Staff noted that if the easement access were eliminated then the pipestem would only require a 5 foot side yard and no variance would be necessary. In addition, the pipestem would only have to be 15 feet leaving an additional five feet of separation between the existing house on Proposed Lot 1 and driveway.
23. Staff recommended that the critical areas be placed into a Native Growth Protection easement and that they be appropriately signed and delineated.
24. This office recently reviewed an appeal of a Ram Short Plat (File No. LUA-07-140) where staff denied a setback variance and required the existing home in that situation to either be remodeled, moved or demolished since it could not meet the setback standards and dedication required when replatting property. In that case it would have been a front yard along a street but, again, was a required setback. The existing home in that case could not meet the setback and since staff found there was no undue hardship, staff recommended the removal of the existing home. This office denied the Ram Appeal and affirmed staff's denial of the variance.

#### **CONCLUSIONS:**

##### **Variance**

1. Variances may be granted when the property satisfies all the conditions described in part below:
  - a. The applicant suffers undue hardship caused by special circumstances such as: the size, shape, topography, or location where code enforcement would deprive the owner of rights and privileges enjoyed by others similarly situated;
  - b. The granting of the variance would not materially harm either the public welfare or other property in the vicinity;
  - c. The approval will not constitute a special privilege inconsistent with the limitations on other property in the vicinity; and
  - d. The variance is the minimum variance necessary to allow reasonable development of the subject site.

The applicant's property is not ripe for the variance requested.

2. This office needs to emphasize that in order to grant a variance all of the above criteria must be satisfied. Generally, the first criterion presents the biggest obstacle to the approval of a variance. There must be undue hardship based on the size, shape, topography or location of the subject site. Economics does not provide the basis for a hardship. In other words, the cost of the demolition of an existing home and building a replacement is not a factor in and of itself. The applicant proposes developing two lots and the only place topography constrains this site is at its western edge which has been accommodated by the larger 10,000 square foot Proposed Lot 2. Proposed Lot 1 is a generally rectangular, 5,000 square foot lot unencumbered by the topography found in the western portion of the parcel. The existing house complicates redevelopment of a two-lot plat but that is not a criterion which justifies a variance. While tearing down the existing house might seem wasteful, that is not one of the justifications. The lot can be developed with any reasonable house if one looks at the lot by itself. It is the location of THE LOT and not the location of objects on the lot which justifies granting a variance. If another result were anticipated than the Ram variance recently denied by staff would be just as amenable to variance relief. While the proposed home in this case is located on an easement, the same setback is required as it was in the Ram case. The fact that one is an easement and the other a street is not the issue - the setbacks demanded are the same in both instances - a setback from a property line where a street or easement is located.
3. In order to determine whether a variance is appropriate one must generally look at the raw property and determine if there is reasonable use of the property without granting a variance. Or are there serious constraints that would deny the property owner reasonable use. In this case the applicant can and is creating a reasonably rectangular 5,000 square foot lot. Could a reasonable home, garage and driveway be constructed on that parcel without a variance? Yes. Could a reasonable home, rear garage and driveway be constructed with an easement over an adjoining pipestem without a variance? Yes. In both cases the answer is the same - reasonable development potential exists without the need to approve a variance. The only reason a variance is needed in this case is because an existing home sits too close to what would be its easement driveway on the adjoining pipestem. The existing home and the location of its existing preferred parking location do not change the ordinary meaning of undue hardship. It appears parking for Proposed Lot 1 could occur to the side or front of the lot.
4. Variance criteria are very strictly construed. Approving this variance while denying the Ram variance would be granting this applicant a special privilege denied in the Ram case. Either existing homes abide by the existing setback standards or they do not? If they do not meet the setbacks mandated there needs to be a clear justification based on size, shape or topography. The fact is that in both cases, there is an existing home and that existing home does not comply with the current setback standards. In both cases, the homes are on appropriately sized and shaped lots, without any unusual topographical constraints and the lots are not unusually located. What is similar in both cases is that in order to divide existing lots into smaller sized lots, the existing homes in both cases would violate the similar setback standards.
5. Variance criteria require consistency in application. Before relaxing a code standard the applicant must prove all of the criteria or the code would have no meaning and it can be varied at will. More to the heart of the matter, staff indicated that this lot does not require an easement for access. It can take access from Lake Avenue directly. If a new house were to be constructed on this new 5,000 square foot lot and wanted rear parking, the home would have to create a reasonable space along its side yard to allow a vehicle to access the rear. There is no undue hardship there. A smaller home or one narrower in profile but deeper in depth could probably accommodate rear parking. Or a new home might opt for front parking. Again, there are a myriad of reasonable solutions to the supposed limitations of this 5,000 square foot lot. In other words, there is no undue hardship in this case as the applicant has reasonable use of the subject site apart from the fact that it wants to save the existing home - just as Ram

6. This office will contrast Ram from this application. The existing home in the Ram case would intrude into the normal setback line and intrude into the streetscape. It would also block sight lines for those in vehicles that are approaching the corner creating a potentially unsafe condition. The public is not served by creating unsafe driving conditions more than just granting a variance in contravention of code provisions.
7. Clearly, if the existing home is to be maintained in its current location and configuration, the requested variance is the minimum necessary for relief.
8. If the proposed variance is approved then it will be incumbent on the City to grant all such variances no matter what the condition or disrepair homes are in. This does become more of an issue when older lots and areas are being replatted. If all parcels with non-conforming setbacks were not treated equally it would be creating an undue precedent and granting this applicant a special privilege. It would not matter what condition a home is in if it meets the criteria established by staff in this case - an intrusion into a required setback by an older existing home is an undue hardship requiring variance relief.
9. The variance is not justified and is denied.

#### Short Plat

10. While the variance is not justified, the short plat is appropriate if the existing home is remodeled, moved or demolished so an appropriately sized and located home can be developed on Proposed Lot 1 or if parking is relocated in some fashion. The subdivision of this parcel serves the public use and interest. It provides additional housing and choice of housing in an area with urban services.
11. The plat protects both the critical slope and the wetland buffer that fall to the rear of Proposed Lot 2. At a bit over 10,000 square feet, Proposed Lot 2 can provide both the critical area protection as well as reasonable space to accommodate a home. Access by pipestem will appropriately allow access to this interior parcel. The applicant can determine whether it wants a shared driveway with an easement for Lot 1 or allow Proposed Lot 1 to gain access directly to Lake Avenue as staff noted there are no real constraints on providing direct access to Proposed Lot 1.
12. The steep slopes will need erosion protection and water quality treatment will be required to protect the wetlands while they are appropriately recharged.
13. The additional home will increase both traffic as well as demands on the Fire Department and the applicant should be responsible for paying the mitigation fees that the City has established for new development.
14. The applicant will have to comply with the City's landscaping provisions.

#### **DECISION:**

The Variance is denied.

The Short Plat is approved subject to the following conditions:

1. The existing home on Proposed Lot 1 shall be remodeled, moved or demolished so an appropriately sized and located home can be developed on Proposed Lot 1 or if parking is

relocated in some fashion.

2. The applicant can determine whether to provide a shared driveway with an easement for Lot 1 or allow Proposed Lot 1 to gain access directly to Lake Avenue. The pipestem for Proposed Lot 2 shall be 15 feet if it only serves Proposed Lot 2 for access or it shall be 20 feet if an easement is granted for access across the pipestem.
3. Any home constructed on either lot shall abide by the setback requirements depending on whether an easement is created or not.
4. That the front yard of the future single family residence on proposed Lot 2 be oriented to the east and a note to this effect be recorded on the face of the plat.
5. That a demolition permit is obtained and all inspections and approvals completed for the removal of the existing shed on proposed Lot 2 and/or home on Proposed Lot 1 prior to recording the final short plat.
6. That a detailed landscape plan be submitted as part of the final short plat application and that landscaping be installed prior to final inspection of the building permit.
7. That prior to recording of the short plat the applicant shall pay a Transportation Mitigation Fee of \$717.75.
8. That prior to recording of the short plat the applicant shall pay a Fire Mitigation Fee of \$488.00.
9. A Native Growth Protection Easement (NGPE) shall be recorded over the protected slopes and wetland buffer area prior to or concurrent with the recording of the final short plat.
10. The edge of the NGPE shall be delineated with a split rail fence and identified with signage as approved by the Community & Economic Development Department project manager. A fencing and signage detail shall be submitted to the Community & Economic Development Department project manager at the time of utility construction permit application for review and approval. The fencing and signage shall be installed prior to the recording of the final short plat.

ORDERED THIS 16<sup>th</sup> day of March 2009

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FRED J. KAUFMAN  
HEARING EXAMINER

TRANSMITTED THIS 16<sup>th</sup> day of March 2009 to the following:

Mayor Denis Law  
Jay Covington, Chief Administrative Officer  
Julia Medzegian, Council Liaison  
Gregg Zimmerman, PBPW Administrator

Dave Pargas, Fire  
Larry Meckling, Building Official  
Planning Commission  
Transportation Division

Alex Pietsch, Economic Development  
Jennifer Henning, Development Services  
Stacy Tucker, Development Services  
Marty Wine, Assistant CAO

Utilities Division  
Neil Watts, Development Services  
Janet Conklin, Development Services  
Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100 of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., March 30, 2009.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., March 30, 2009.**

**If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.**

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.